

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of the Incumbent Local	)	
Exchange Carriers	)	
	)	
Implementation of the Local Competition	)	
Provisions of the Telecommunications Act	)	CC Docket No. 96-98
of 1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

**OPPOSITION OF VERIZON<sup>1</sup> TO THE PETITIONS FOR  
RECONSIDERATION AND/OR CLARIFICATION OF  
ORDER ON RECONSIDERATION**

The Commission should deny the petitions<sup>2</sup> for reconsideration and/or for clarification filed by McLeodUSA and Covad *et al.* that seek to unwind the unbundling relief granted to broadband facilities by the Commission in the *Triennial Review Order*<sup>3</sup> and the *FTTC Order*.<sup>4</sup>

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<sup>1</sup> The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. identified in the list attached as Exhibit A hereto.

<sup>2</sup> McLeod USA Telecommunications Services, Inc. Petition for Reconsideration, WC Docket No. 04-313 and CC Docket No. 01-338 (filed Jan. 28, 2005) ("McLeod USA"); Covad Communications Group, Inc., NuVox Communications, Inc. and XO Communications, Inc. Petition for Reconsideration and/or Clarification of Order on Reconsideration, CC Docket Nos. 01-338, 96-98 and 98-147, (filed Jan. 28, 2005) ("Covad et al.").

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capabilities*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*") corrected by Errata, 18 FCC Rcd 19020 (2003).

<sup>4</sup> *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996;*

The Commission recognized in the *Triennial Review Order* that next-generation, packetized broadband facilities, like Verizon's fiber-to-the-premises ("FTTP") network, should not be subject to the unbundling requirements of legacy networks. This distinction applies equally to DS1 and DS3 facilities and the Commission limited unbundling obligations of those facilities to only those provided over legacy Time Division Multiplexing ("TDM") networks. The Commission's policy decision to treat FTTP and other broadband facilities differently from legacy networks has been upheld by the D.C. Circuit Court of Appeals,<sup>5</sup> and the continued development and rollout of high-speed Internet access continues to be the "No. 1 priority" for the Commission today.<sup>6</sup>

Petitioners nevertheless argue that the Commission's broadband rules do not preclude them from obtaining access to "enterprise" (e.g. DS1 and DS3) loops irrespective of the underlying loop technology.<sup>7</sup> Their efforts to have the Commission jettison its pro-broadband policy and require unbundling of next-generation broadband networks should be soundly rejected. The Commission should instead confirm again the bright-line technology-based rule that *no* packetized fiber loop facilities are subject to unbundling, regardless of whether those facilities meet the definition of FTTP loops that are free of unbundling.

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*Deployment of Wireline Services Offering Advanced Telecommunications Capabilities*, Order on Reconsideration, 19 FCC Rcd 20293 (2004) ("*FTTC Order*")

<sup>5</sup> See *United States Telecom Association v. FCC*, 359 F.3d 554, 583-84 (D.C. Cir. 2004) (upholding Commission's unbundling rules with respect to FTTH and broadband loops).

<sup>6</sup> National Journal's Technology Daily, "*FCC Chief Says Broadband Deployment Is Top Priority*" (May, 31 2005).

<sup>7</sup> See Covad et al. at 4-7 and McLeod at 4-5.

**I. The Commission Has Determined That FTTP and Packetized Fiber Transmission Facilities Need Not Be Unbundled.**

In the *Triennial Review Order*, the Commission stated that it was adopting a bright line distinction between incumbents' legacy networks and their broadband facilities. *Triennial Review Order* ¶ 293. The Commission explained that, by providing certainty as to what the rules would be for these next-generation broadband facilities, its rules would "provide the right incentives for all carriers, including incumbent LECs, to invest in broadband facilities." *Triennial Review Order* ¶ 213. As the Commission correctly reasoned, this policy will "stimulate facilities-based deployment" by providing Verizon and others investing in broadband facilities "with the certainty that their fiber optic and packet-based networks will remain free of unbundling requirements." *Id.* ¶ 272. Thus, the Commission concluded that "[a]lthough we require unbundling of legacy technology used over hybrid loops, we decline to attach unbundling requirements to the next-generation network capabilities of fiber-based local loops, *i.e.*, those loops that make use of fiber optic cables and electronic or optical equipment capable of supporting truly broadband transmission capabilities." *Id.* Indeed, the Commission emphasized that it was drawing this distinction based on technology instead of distinctions based on the speed of the service, the identity of the customer, or some other factor. *See Triennial Review Order* ¶ 293 ("we conclude that such a line is best drawn based on technological boundaries *rather than* transmission speeds, bandwidth, or some other factor" (emphasis added)). The rules adopted by the Commission provide this certainty in two respects.

First, the Commission's rules provide that fiber loops to an end user customer's premises, regardless of "whether dark or lit," are not subject to an unbundling requirement. 47 C.F.R. § 51.319(a)(3). The Commission has also clarified that any facilities that qualify as FTTP or fiber-to-the-curb ("FTTC") loops under its rules do not become subject to an unbundling

requirement just because a signal is handed off to customers in TDM format. *FTTC Order* ¶ 21. In this way, the Commission's rules ensure that loops that qualify as FTTP or FTTC for purposes of the Commission's rules are not subject to unbundling regardless of the services provided over those loops.

Second, the Commission also separately made clear that “[t]he rules we adopt herein do not require incumbent LECs to unbundle *any transmission path* over a fiber transmission facility between the central office and the customer's premises (including fiber feeder plant) that is *used to transmit packetized information*.” *Triennial Review Order* ¶ 288 (emphasis added). The Commission also has clarified “that incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability,” and, as noted above, has made clear that converting a packet-based signal into TDM format to be handed off to the customer does not give rise to an unbundling obligation. *FTTC Order* ¶ 20. Again, the Commission drew a bright line between legacy TDM technology and packetized fiber loop facilities, regardless of whether they meet the definition of FTTP or FTTC loops that are not subject to unbundling.<sup>8</sup>

The Commission's policy of encouraging broadband investment has seen real results. Since the Commission's decision in the *Triennial Review Order*, Verizon alone has passed more than one million homes with its FTTP network and will pass a total of three million homes by the

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<sup>8</sup> In addition to concluding that packetized, fiber-loop facilities themselves are not subject to unbundling, the Commission concluded “on a national basis, that competitors are not impaired without access to packet switching, including routers and DSLAMS,” and “decline[d] to unbundle packet switching as a stand-alone network element.” *Triennial Review Order* ¶ 537. Given that the fiber in next-generation fiber architectures is integrated into optical or other packetized equipment, and that access could not be provided without access to the packet switching equipment, the Commission's decision that unbundling was not warranted for packet-switching equipment would independently preclude the unbundling of packetized, fiber-loop facilities like FTTP.

end of 2005. Today, Verizon FiOS Internet Service is already deployed in parts of 15 states and provides speeds far superior to that of cable modem at comparable prices. As a result of the Commission's unbundling relief, Verizon brought FTTP to its first MDU customer this May and began offering FiOS Internet Service for Business. FiOS TV is positioned to launch later this year. And with video offerings that will change the way consumers view and use television today, Verizon's new network will provide consumers with more choice and competition in cable's core market.

## **II. The Commission's Technological Distinction for Unbundling Purposes Applies Equally to DS1 and DS3 Loops.**

Despite the clear distinction by technology, Petitioners nevertheless argue that the Commission should either reconsider or clarify the FTTC Order to "confirm" that CLECs are entitled to enterprise loops, including DS1 and DS3 loops, regardless of the technology used by incumbent carriers. In support of this statement, Petitioners rely on a sentence from the *Triennial Review Order* that DS1 loops will be available to requesting carriers "regardless of technology used to provide such loops." Covad et al. at 4; McLeod at 4. This reliance, however, is misplaced for two reasons.

First, the sentence on which Petitioners rely itself states that such loops will be provided "unless otherwise specifically indicated." See *Triennial Review Order* ¶ 325 n.956. As explained above, the Commission did specify otherwise in the case of FTTP and packetized loops and determined that those loops need not be unbundled. Indeed, the cite itself includes an internal reference, which Petitioners omitted, that states "*See supra* Part VI.A.4.a.(v)(discussing FTTH)." *Id.*

Second, the Commission specifically addressed the importance of this technological distinction on the availability of DS1 and DS3 loops in any instances where those loops are

subject to an unbundling obligation and made clear that any such obligation extended only to existing TDM capabilities of incumbents' networks. For example, the Commission explained that, "as discussed more specifically in the Enterprise Loops section . . . incumbent LECs must provide unbundled access to a complete transmission path *over their TDM networks* to address the impairment we find that requesting carriers currently face," but it repeatedly emphasized that any "packetized fiber capabilities will not be available as UNEs." *Id.* ¶ 289. The Commission also went on to "stress that the line drawing in which we engage does not eliminate the existing rights competitive LECs have to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service to customers," yet emphasized again its intent only to require unbundling of legacy facilities:

These *TDM-based* services – which are generally provided to enterprise customers rather than mass market customers – are *non-packetized*, high-capacity capabilities provided over the circuit-switched networks of incumbent LECs. To provide these services, incumbent LECs typically use the features, functions and capabilities of their networks as deployed to date – *i.e.*, a transmission path provided by means of the TDM form of multiplexing over their digital networks.

*Id.* ¶ 294 (emphasis added). In short, the Commission made clear that the distinction between legacy TDM technology and packetized fiber facilities applies fully to DS1 and DS3 services and that the packetized fiber facilities need not be unbundled.

### **III. The Commission Should Continue The Positive Steps It Has Taken To Promote The Development Of Advanced Services.**

Instead of moving backwards as suggested by the Petitions, the Commission should continue the positive steps it has taken to encourage broadband deployment by confirming again the bright line technology-based rule adopted in the *Triennial Review Order* that *no* packetized fiber loop facilities are subject to unbundling, regardless of whether those facilities meet the

definition of FTTP loops that are free of unbundling.<sup>9</sup> This confirmation will further the Commission's policy in a number of ways.

First, carriers cannot look at the customer type when rolling out new network facilities. Imposing an unbundling obligation for some customers served by a packetized fiber network is tantamount to imposing an unbundling obligation for all customers. Requiring unbundling of facilities that are part of a generalized FTTP rollout would require costly re-engineering of the network to provide multiple points of access to individual elements, require all new operations support system capabilities (which make up a substantial part of the overall cost of these new networks), and create added investment risk that will undermine incentives for widespread deployment. Therefore, keeping these advanced networks free of unbundling obligations regardless of the customers served by these generalized, fiber network deployments is critical to widespread deployment.

Second, the Commission's policy would ensure the deployment of the next-generation networks to as many customers as possible. This allows carriers to provide new services to small and medium business customers that are not available today, and provide a significant benefit to these customer segments. On the other hand, limiting unbundling relief to only "mass market" customers and then defining the "mass market" narrowly to include only residences and single line businesses, as Covad et al. suggest (at 9), would deprive these segments of the benefits of

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<sup>9</sup>In the *Triennial Review Order*, the Commission had already refused to base its distinction on the customer served. It stated that although it was analyzing loop types based on different customer markets, such as the mass market and the enterprise market, "our market classifications allow us to conduct our impairment analyses for the various loop types at a more granular level but are not intended to prohibit the use of UNE loops by customers not typically associated with the respective customer market class." *Triennial Review Order* ¶ 210. It continued, "Thus, while we adopt loop unbundling rules specific to each loop type, *our unbundling obligations and limitations for such loops do not vary based on the customer to be served*". *Id.* (emphasis added). See also *id.* ¶ 288.

broadband. Similarly, McLeod's request to have the Commission rescind its decision that ILECs are not required to provide access to packet networks even if it performs a "TDM handoff" (at 5) would also prevent certain customers from having the benefits of broadband. A reversal of the "TDM handoff" decision would mean that those businesses that have not purchased or do not have the resources to invest in new customer premises equipment, particularly smaller businesses, will be deprived of the faster technology and services that these new networks provide.

Third, because they are being deployed where cable operates, the resulting, additional offerings to business customers would provide a competitive alternative to cable, and would likewise encourage cable companies to develop new services to meet the needs of these customers. It would also provide an incentive to CLECs to deploy and invest in their own networks instead of perpetuating reliance on one network and legacy technology. *See Triennial Review Order* ¶ 290 ("Because competitive LECs will not have unbundled access to the packet-based networks of incumbent LECs, they will need to continue to seek innovative access options, including the deployment of their own facilities necessary for providing broadband services to the mass market").

Finally, from a practical perspective, the standard is easily administered and eliminates the existing uncertainty as to whether particular customers can or cannot be served by FTTP and packetized fiber facilities without triggering unbundling obligations. The certainty that would come from again confirming this fundamental distinction would go far to encourage additional investment in next-generation broadband facilities. *Id.* ¶ 272.



**Conclusion**

For the reasons stated above, the Commission should deny the Petitioners' request for clarification and/or reconsideration.

Respectfully submitted,

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**THE VERIZON TELEPHONE COMPANIES**

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.